



**DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS
OFFICE OF THE ZONING ADMINISTRATOR**

February 21, 2019

Christine M. Shiker
Holland & Knight LLP
800 17th Street, N.W., Suite 1100
Washington, DC 20006

Re: 1222 1st Street, N.E. (Square 672, Lot 844)

Dear Ms. Shiker:

This is to confirm the substance of our discussions on January 16, 2019, relating to the development of 1222 1st Street, N.E. (Square 672, Lot 844) (the "Property"). The Property is zoned D-5 and is located within the North of Massachusetts Avenue ("NoMa") Sub-Area. 11-I DCMR § 615.2. Although residential use is permitted, there is no requirement to provide residential use in the D-5 zone. 11-I DCMR § 302.1. You informed me that the Property will be developed with a building devoted to hotel use with ground floor eating and drinking establishment as part of the hotel (the "Project"). These uses are permitted as a matter-of-right in the D-5 zone. See 11-I DCMR § 302.1; 11-U DCMR §§ 515.1(a); 512.1(a), 510.1(o).

Ground Floor Use Requirements

The Property fronts on 1st Street, N.E., which is a designated primary street within the NoMa Sub-Area. Figure I § 615. As a result, the use regulations of Subtitle I § 601 govern ground floor uses to a depth of 150 feet from the building line on 1st Street, N.E. 11-I DCMR § 615.3. Accordingly, a building on the Property must:

- a. Devote not less than 50% of the ground floor gross floor area to one or more of the following use categories:
 - i. Retail;
 - ii. Entertainment, assembly, and performing arts;
 - iii. Eating and drinking establishments;
 - iv. Arts, design, and creation; or
 - v. Services, including both general and financial services;

- b. Devote no more than 20% of the ground floor gross floor area uses required in Subtitle I § 601.2(a) to services (financial), fast food establishment, travel, or ticket offices; and
- c. Devote 100% of the building's street frontage along the primary designated street segment to required uses identified in Subtitle I § 601.2(a) except for space required for fire control or devoted to building entrances for pedestrians, or for vehicular parking and loading entrances that are:
 - i. Required by DDOT; or
 - ii. Permitted by the Board of Zoning Adjustment by special exception evaluated according to Subtitle I § 601.2(a).

The net leasable area occupied by the uses required on 1st Street, N.E., shall be no less than 80% of the gross floor area allocated to these uses 11-I DCMR § 601.4.

As shown on Sheets 3 and 7 of the attached architectural drawings (the "Plans"), the ground floor of the Project includes: (i) 6,561 square feet of eating and drinking establishment uses, which represents 50.1% of the ground floor gross floor area. Based on past precedent (e.g., the POD Hotel located at 627 H Street, N.W.), the hotel's lobby restaurant and bar will satisfy the preferred use requirements of Subtitle I § 601.2 of the Zoning Regulations as the uses constitute an eating and drinking establishment. In addition, since 100% of the Project's street frontage along 1st Street, N.E. is devoted to required uses identified in Subtitle I § 601.2(a) except for space required for fire control or devoted to building entrances for pedestrians, the proposed ground floor as shown on Sheet 7 of the Plans complies with the requirements of Subtitle I § 601.2 of the Zoning Regulations. Moreover, Sheet 7 of the Plans indicates that 100% of the gross floor area allocated to the eating and drinking establishment is net leasable, which will comply with the net leasable area requirement of Subtitle I § 601.4.

Ground Floor Design Requirements

Since 1st Street, N.E. is a designated primary street, the ground floor design requirements of Subtitle I § 602 govern the ground floor design of a building on the Property. 11-I DCMR § 615.4. For the Project, the following design requirements apply to the portion of a building that fronts on 1st Street, N.E.:

- a. The ground floor must have a minimum clear height of 14 feet for a continuous depth of at least 36 feet from the building line on a 1st Street, N.E.;
- b. The ground story must devote at least 50% of the surface area facing 1st Street, N.E. to display windows or pedestrian entrances having clear low-emissivity glass, and ensure that the view through the display windows and pedestrian entrances is not blocked for at least 10 feet in from the building face; and

- c. Ground floor pedestrian entrances, or areas where a future ground floor entrance could be installed without structural changes, must be located no more than an average distance of 40 feet apart on the façade facing 1st Street, N.E. In no case shall there be less than one door.

Sheets 12 through 14 of the Plans indicate that: (i) the ground floor will have a minimum clear height of 14 feet for a continuous depth of at least 36 feet from the building line on 1st Street, N.E.; (ii) at least 50% of the surface area facing 1st Street, N.E. is display windows or pedestrian entrances having clear low-emissivity glass that includes views through the display windows and pedestrian entrances that is not blocked for at least 10 feet in from the building face; and (iii) pedestrian entrances are located no more than an average distance of 40 feet apart on the façade facing 1st Street, N.E., in compliance with Subtitle I § 602.1 of the Zoning Regulations. 11-I DCMR § 602.1.

Height and FAR

The maximum permitted height for the Property is 130 feet based on Subtitle I § 540.1 and the 1910 Height Act since the Property fronts on 1st Street, N.E., which has a right-of-way width of 110 feet. The Plans indicate that the Project will have a height of 105 feet measured in compliance with Subtitle B § 307 of the Zoning Regulations.

The maximum permitted non-residential floor area ratio ("FAR") of a building in the D-5 zone not employing credits as described below is 6.5 FAR. 11-I DCMR § 539.3. According to Sheet 3 of the Plans, the Project includes 91,857 square feet of gross floor area or 6.48 FAR.

Penthouse

The maximum permitted height of a penthouse in the D-5 zone is 20 feet, and the maximum number of stories for penthouse habitable space is one plus a mezzanine. A second-story is permitted for penthouse mechanical space. 11-I DCMR § 540.5. Penthouse mechanical space, communal recreation space, and penthouse habitable space of less than 0.4 FAR are all excluded from the FAR calculation for the building. 11-C DCMR § 1503.1. A penthouse may house mechanical equipment or any use permitted within the zone, except that a nightclub, bar, cocktail lounge, or restaurant use is only permitted as a special exception if approved by the Board of Zoning Adjustment. 11-C DCMR § 1500.3(c). As shown on Sheet 13 of the Plans, the Project includes a one-story mechanical penthouse with a maximum height of 20 feet, measured from the roof upon which the penthouse sits.

Penthouses, screening around unenclosed mechanical equipment, rooftop platforms for swimming pools, roof decks, trellises, and any guard rail on a roof must all meet the setback requirements set forth in Subtitle C § 1502 of the Zoning Regulations. For the Project, a penthouse must be setback, as follows: (a) a distance equal to its height from the front building wall of the roof upon which it is located; (b) a distance equal to its height from the rear building wall of the roof upon which it is located; (c) a distance equal to its height from the side building wall of the roof upon which it is located if on corner lot adjacent to a public street or alley; (d) a distance equal to ½ its height from the side building wall of the roof upon which it is located that

is not adjoining another building wall and is not adjacent to a public or private street or alley right-of-way of public park; and (e) a distance equal to its height from any building wall that borders any court other than closed courts. 11-C DCMR § 1502.1. As shown on Sheets 10 through 14 of the Plans, the penthouses and all other roof structures, including guardrails, trellises, and roof decks, if any, will be all setback 1:1 based on each height above the roof as measured from the front, rear, and south side building wall of the roof upon which the penthouse sits. The penthouse will also be setback 0.5:1 from the north side building wall of the roof upon which the penthouse sits, in compliance with Subtitle C § 1502 of the Zoning Regulations.

Lot Occupancy

A building constructed in the D-5 zone may occupy 100% of its site. 11-I DCMR § 205.2. Sheets 3 and 7 of the Plans indicate that the Project will occupy 92% of the Property.

Side Yard

No side yard is required for a principal structure in a D zone; however, if a side setback is provided on any portion of the principal building, it must comply with Subtitle B §§ 319 and 320, and shall be at least four feet wide. 11-I DCMR § 206.1. Sheets 3 and 7 of the Plans indicate that the Project does not include a side yard.

Rear Yard

A rear yard must be provided for each structure located in a D zone; however, in the case of a corner lot, a court may be provided in lieu of a rear yard subject to the following: (a) the court must comprise at least two building walls and at least one property line; (b) the building walls need not have windows or face each other; (c) the court must be provided above a horizontal plane 25 feet above the mean elevation of the rear lot line, and may be provided below that; and (d) the court must comply with the width requirements for a closed court as specified in Subtitle I § 207.1, with the height of the court being measured from the horizontal plane described in Subtitle I § 205.4(c), and with the width being computed for the entire height of the court above that plane. 11-I DCMR § 205.4. You informed me that a court is being provided in lieu of a rear yard, as shown on Sheet 8 of the Plans and as is discussed further below.

Courts

You informed me that the Project includes two closed courts. As shown on Sheet 3 and 8 of the Plans, Court A is a central closed court that has a height of 23 feet. Based on a court height of 23 feet, the Plans indicate that a 12 foot minimum court width is required and a minimum area of 288 square feet is required based on the requirements in Subtitle I § 207.1. Sheets 3 and 8 of the Plans indicate that the provided court width is 18 feet, 9 inches measured as the lesser horizontal dimension and the area is 752 square feet, which comply with the minimum height and area requirements.

As shown on Sheet 3 and 8 of the Plans, Court B is provided in lieu of a rear yard, above a horizontal plane of 25 feet above the mean elevation at the rear lot line. Based on a court height

of 100 feet, a 20.83 foot minimum court width is required and a minimum area of 868 square feet is required. Sheets 3 and 8 of the Plans indicate that provided court width for Court B is 45 feet, 8 inches, measured as the largest inscribed circle, and a minimum area of 4,136 square feet is provided.

GAR

The GAR required in the D-5 zone is 0.2. 11-I DCMR § 208.1. As shown on Sheet 3 of the Plans, the Project will have a minimum GAR of 0.2.

Vehicle Parking, Bicycle Parking, and Loading

Vehicle parking spaces are not required in D zones, other than areas west of the centerline of 20th Street, N.W. 11-I DCMR § 212.1. As a result, no parking spaces are required. As shown on Sheet 4 of the Plans, the Project does not include any parking spaces and no parking mitigation is required.

Bicycle parking spaces are required for residential use and all non-residential uses with at least 4,000 square feet of gross floor area. For a lodging use, one long term bicycle space is required for every 10,000 square feet of gross floor area, and one short term bicycle space is required for every 40,000 square feet of gross floor area. 11-C DCMR § 802.1. For eating and drinking establishment uses, one long term bicycle parking space is required for each 10,000 square feet of gross floor area and one short term space is required for each 3,500 square feet of gross floor area. 11-C DCMR § 802.1. As a result, the proposed building requires 2 short-term bicycle spaces and 9 long-term bicycle spaces for the hotel use and 1 short-term and 2 long-term spaces for the eating and drinking establishment. As shown on Sheet 4 of the Plans, the proposed building includes 2 short-term and 9 long-term bicycle parking space for the hotel use and 1 short-term and 2 long-term spaces for the eating and drinking establishment.

The loading requirement for uses in the D-5 zone are set forth in Subtitle C § 901.1 of the Zoning Regulations. The loading requirement for lodging uses with 50,000 to 100,000 square feet of gross floor area is one loading berth and for a lodging use with more than 100,000 to 500,000 square feet of gross floor area is two loading berths 11-C DCMR § 901.1. The loading required for eating and drinking establishment uses with 5,000 to 20,000 square feet of gross floor area is one loading berth. 11-C DCMR § 901.1. Each loading berth must be accompanied by a 100 square foot adjacent loading platform. 11-C DCMR § 901.4. All loading berths must be a minimum of 12 feet wide, have a minimum depth of 30 feet, and have a minimum vertical clearance of 14 feet. 11-C DCMR § 905.2. When two or more uses in different use categories share a building or structure, the building or structure is only required to provide enough berths and spaces to meet the requirement for the use category with the *highest requirement*, and not the combination of requirements for all use categories provided that all uses that require loading have access to the loading area. 11-C DCMR § 902.2 (emphasis added). As shown on Sheets 4 and 7 of the Plans, the proposed building includes two loading berths at 12 feet x 30 feet and two adjacent platforms at 100 square feet.

Buildings requiring loading must also have a designated trash area either within the building or within a loading berth or within an accessory building or structure immediately adjacent to the loading area or within an enclosed receptacle in a designated trash area within the loading area. All new development over 2,000 square feet of gross floor area, other than buildings with one or two dwelling units, must clearly show the area for the building's trash receptacles on the building plans. 11-C DCMR § 907.1. As shown on Sheet 7 of the Plans, a trash area is provided within the building adjacent to the loading area in accordance with Subtitle C § 907.1 of the Zoning Regulations.

Inclusionary Zoning

Hotel use is not subject to the Inclusionary Zoning ("IZ") requirements or bonuses of Subtitle C, Chapter 10. 11-C DCMR § 1001.5(d). Because the Project does not include penthouse habitable space, the Project has no IZ requirements.

Based on my review of the foregoing, I find that the Project complies with the requirements of the Zoning Regulations and without requirement for review by the Board of Zoning Adjustment. Upon proper presentation of plans, I will approve a building permit application for the construction required for the Project as shown on the Plans.

I believe that I have addressed the issues which we discussed and agreed upon. Please let me know if you have any further questions.

Sincerely,



Matthew Le Grant
Zoning Administrator

Attachments: Architectural Drawings, dated January 17, 2019

This memorandum is issued in reliance upon, and therefore limited to, the questions asked, and the documents submitted in support of the requested determination. The determination reached in this memorandum are made based on the information supplied, and the laws, regulations, and policy in effect as of the date of this memorandum. Changes in the applicable laws, regulations, or policy, or new information or evidence, may result in a different determination. This memorandum is NOT a "final writing," as used in Section Y-302.5 of the Zoning Regulations (Title 11 of the District of Columbia Municipal Regulations), nor a final decision of the Zoning Administrator that may be appealed under Section Y-302.1 of the Zoning Regulations, but instead is an advisory statement of how the Zoning Administrator would rule on an application if reviewed as of the date of this memorandum based on the information submitted for the Zoning Administrator's review. Therefore this memorandum does NOT vest an application for zoning or other DCRA approval process (including any vesting provisions established under the Zoning Regulations unless specified otherwise therein), which may only occur as part of the review of an application submitted to DCRA.

File: Det Let re 1222 1st St NE to Shiker 2-21-19